8385673/2024/TW-LTR-I-SOW01

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TRIBAL WELFARE DEPARTMENT - LTR - Revision Petition filed by Smt. Nadimpalli Vijayalakshmi, W/o. Subbraju, Addateegala (V&M), Alluri Sitharamaraju District erstwhile East Godavari District against the orders of the Additional Agent to the Government, Rampachodavaram, Alluri Sitharamaraju District in C.M.A.No.16/2020, dated:17.12.2020 in respect of land an extent of Ac.0.08 Cts in Sy.No.69/3 situated at Addateegala (V&M), Alluri Sitharamaraju District erstwhile East Godavari District – Dismissed – Orders - Issued.

TRIBAL WELFARE (LTR.I) DEPARTMENT

G.O.MS.No.80 Dated:05.01.2024
Read the following:

1. Revision Petition filed by Smt. Nadimpalli Vijayalakshmi, W/o. Subbraju, Addateegala (V&M), Alluri Sitharamaraju District, dated:04.01.2021.
2. From the Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District, C.M.A. No. 16/2020/ITDA/2021, dated:16.02.2022.

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ORDER:

In the reference 1st read above, Smt. Nadimpalli Vijayalakshmi, W/o. Subbaraju, Addateegala (V&M), Alluri Sitharamaraju District erstwhile East Godavari District against the orders of the Additional Agent to the Government, Rampachodavaram, Alluri Sitharamaraju District in C.M.A.No.16/2020, dated:17.12.2020 in respect of land an extent of Ac.0.08 Cts in Sy.No.69/3 situated at Addateegala (V&M), Alluri Sitharamaraju District erstwhile East Godavari District.

2. Brief history of the subject case:

- Smt. Murla Chellayamma W/o. late Satyanarayana, resident of D. Bhimavaram Village, Addateegala Mandal, Alluri Sitharamaraju District erstwhile East Godavari District has filed a complaint before the Special Deputy Collector (TW) under Section 3(2)(a) of the APSALTR 1/59, as amended by regulation by 1/70 stating that an extent of Ac. 0.08 cts in R.S. No. 69 situated in Addateegala (V&M) for restoration of the Petition Scheduled Land from the Non-tribal respondent (Smt. Nadimpalli Vijaya Lakshmi, W/o. Subbaraju).

- After due enquiry, the Special Deputy Collector (TW), Rampachodavaram ordered dated : 26.06.2020, L.T.R.P.No.2/2015, that land in an extent of Ac.0.08 cts in R.S.No.69 of Addateegala Village is classified as Government Poramboke, which was occupied by Sri Chekka Venkata Dora and Sri Chekka Satyanarayana respectively, who are the father-in-law and husband of the Respondent Smt. Murla Chellayamma since long back but not by Smt.Nadimpalli Vijaya Laksmi, W/o. Subbaraju (Appellant herein)

(P.T.O)

and the occupation of the land is treated as "encroachment".

- The Special Deputy Collector (TW), Rampachodavaram ordered dated: 26.06.2020, L.T.R.P.No.2/2015 was ordered that no recorded evidence in respect of the said immovable property. Accordingly, the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District passed orders in favour of Smt.Murla Chellayamma as right full occupier of the said property by allowing the complaint filed by her.

- Aggrieved by the orders of Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District, Smt. Nadimpalli Vijaya Lakshmi, W/o. Subba Raju, Addateegala (V&M) has filed an appeal dated: 09.07.2020 before the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District earstwhile East Godavari District for seeking orders of suspension of lower court order Dt:26.06.2020 and also to set aside the orders in O.S. No.5/2018.

- After examined all the documentary evidence available on record and orders of the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District passed in L.T.R.P.No.2/2015, dated: 26.06.2020 verification of the records and available material, the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District erstwhile East Godavari District is stated that the Petition Scheduled Property was given on a gift deed dated:30.01.1974 to Chekka Satyanarayana husband of the respondent and by father chekka venkanna Dora, that afterwards it was gifted to the respondent by her husband on 08.11.1983, that the Tahsildar, Addateegala has certified the Petition Scheduled Property as belong to the respondent herein under House Tax Assessment No. 161 (2007-2008), that the Appellant has House Tax Assessment No. 419 (2015-2016), 497 (2019-2020), 506 dated: 15.02.2017 that the Appellant could not adduce evidence as to how the Petition Scheduled property directed to her, that the House Tax Assessment No. 161 and 497 are different.

- There is no recorded evidence adduced showing the occupation of Petition Scheduled Property prior to enforcement of Regulation 1/70, by the Appellant.

- The Lower Court has already held that the Respondent herein was an rightful occupier.

- Regulation 1959 was a Special Enactment intended to protect the interests of Tribals in Agency Tracts. The respondent belongs to Schedule Tribe. Transfer or agreement to transfer of land or any interest therein, not to vesting of right in any one as a result of transmission or as a result of succession on death of original owner does not affect the operation of law of inheritance.

- The Revenue divisional Officer, Rampachodavram, Alluri Sitharamaraju District who submitted his report in the case (vide Ref.C/380/2020, dated: 03.12.2020 stated that the Appellant herein has no valid records in support of her claim.

- As per Sec.3 (1) (b) of Land Transfer Regulation 1959 any immovable property situation in Agency area and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by a person or his predecessor in possession through a transfer made to him by a member of Schedule Tribe. The Land Transfer Regulations disqualifies Non Tribe a class from acquiring or getting property on transfer.

- Finally, the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District has order under Sec. 3(2) (a) of APSALTR 1959 that dismiss the appeal and uphold the orders of the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District in LTRP No.2/2015, dated: 26.06.2020 and the Revenue Divisional Officer, Rampachodavaram is directed to examine the status of the occupation of immovable property situated in Sy.No.69/3, measuring an extent of Ac. 0.08 cents of Addateegala (V&M) vide C.M.A.No. 16/2020, dated:17.12.2020.

3. Aggrieved by the above orders, the Revision Petitioner, Smt. Nadimpalli Vijaya Lakshmi, W/o. Subbaraju filed a Revision Petition before the Government and requested the Hon'ble Court may be pleased to set aside the orders passed by the courts below in C.M.A.No.16/2020, dated: 17.12.2020 on the file of the Additional Agent to Government, Rampachodavaram while confirming the orders in L.T.R.P.No.2/2015, dated: 26.06.2020 on the file of the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District and pass such other order or orders as are deemed fit or proper in the circumstances of the case. And pass such other order or orders may deem fit and proper in the circumstances of the case.

4. The Project Officer, ITDA, Rampachodavaram cum the Additional Agent to the Government, Rampachodavaram, Alluri Sitharamaraju District has been requested to furnish the detailed Parawise remarks and connected records in the subject case so as to dispose of the Revision Petition at Government level. Accordingly, the Project Officer, ITDA, Rampachodavaram in his letter dated: 16.02.2022 has enclosed the copy of order issued by the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District passed in CMA No. 120/2005, dated. 12.08.2011 and the remarks on the affidavit filed by the Petitioner.

5. The said Revision Petition has been posted for hearing before the Hon'ble Revision Authority on several dates and finally 15.07.2023 duly informing the same to the petitioner and defendants. During the course of the hearing and on perusal of the connected records/relevant materials and Para-wise Remarks submitted dated: 16.02.2022 by the Project Officer, ITDA, Rampachodavaram cum Additional Agent to the Government, Rampachodavaram, Alluri Sitharamaraju District and written arguments filed by both parties counsels, the Revision Authority has observed that:

(I) This Memorandum of Revision Petition is filed by Smt. Nadimpalli Vijayalakshmi, W/o. Subbaraju, Addateegala Village and Mandal, presently in Alluri Sitharamaraju District, under Section 6 of the AP Scheduled Area Land Transfer Regulations 1959 as amended by

Regulation 1 of 70 against the orders of the Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District passed in C.M.A.No.16 of 2020, dated: 17-12-2020, in respect of scheduled House property in Sy.No.69 an extent of Ac. 0.08 cents, bearing door No.1-506 (New Door No.1-497) which is situated at Addateegala village and Mandal, confirming the orders of the Special Deputy Collector (TW), Rampachodavaram passed in L.T.R.P.No.2 of 2015 dated: 26.06.2020 and also directing the Revenue Divisional Officer, Rampachodavaram to examine the status of the occupation of the land in question and take action to regularize it in favour of the Respondent in pursuant to G.O.Ms.No.463 Revenue (ASSGN-I) Department. Dated:06.11.2019.

(II) The matter came for hearing finally before the Revision Authority on 15.07.2023. The counsel for both the Revision Petitioner and the unofficial respondent filed their written arguments. The Additional Agent to Government, Rampachodavaram, Alluri Sitharamaraju District furnished parawise remarks in the case. Heard parties. After perusing the material papers available in the file the following order is made.

(III) The main contention of the Revision Petitioner is that the schedule land is in her occupation prior to enactment of A.P.S.A. Land Transfer Regulation, 1970 as such there is no illegal transfer effected in the case and the lower authorities failed to appreciate the Xerox copies of the documents filed by her and on other hand the appellate authority had considered the documents filed by the unofficial respondent at the enquiry stage before the Appellate Authority and that the Gift deed is not permissible since the land is classified as Government Poromboke and that as such no transfer is permitted on such lands among their family members and that the Appellate Authority passed an impugned order erroneously and the possession and occupation of Government lands is not violative of the provisions of Land Transfer Regulations 1 of 59 as amended by 1 of 70 as per the ruling of AP High Court held in D.Appalaraju & others Vs State of AP, 2007 (6) ALT 510(AP).

(IV) The brief facts of the case are that Smt. Murla Chellayamma/un official respondent here in filed a petition before the Special Deputy Collector (TW), Rampachodavaram against the Revision Petitioner here in and Nadimpalli Subbaraju of Addateegala Village & Mandal under Section 3(1) of A.P. Scheduled Areas Land Regulation 1 of 1959 as amended by Regulation 1 of 1970. The Special Deputy Collector(TW), Rampachodavaram after an enquiry passed an order in L.T.R.P. No. 2/2015 allowing the claim of the Petitioner in respect of the schedule property Ac.0.08 (Govt. Land) encroachment in R.S. No. 69 of Addateegala Village & Mandal.

(V) Aggrieved by the order of the Special Deputy Collector (TW) the Revision Petitioner here in filed an appeal in CMA No. 16/2020 before the Additional Agent to Government, Alluri Sitharamaraju District erstwhile East Godavari District, which was dismissed while upholding the orders of the Special Deputy Collector (TW), Rampachodavaram, Alluri Sitharamaraju District made in LTRP No.2/2015, dated. 26.06.2020 and ordered to take action to regularize the land in RS No.69/3 Ac.0.08 cts

of Addateegala Village and Mandal in favour of the respondent i.e., Murla Chellayamma. Aggrieved by the said orders in CMA No. 16/2020 i.e. the Revision Petitioner has filed this revision before the Government.

(VI) The background of cases and rival submissions give rise to the following point for consideration.

(VII) Whether the provisions of AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 are applicable to the Government Poramboke lands situated in the Scheduled Area? And whether the non tribals have any legal right over such Government Lands in the Scheduled Area?

(VIII) As per Sec.3 (1) (b) of Land Transfer Regulations 1959 Any immovable property situated in Agency area and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by a person or his predecessor in possession through a transfer made to him by a member of Scheduled Tribe.

(IX) The Clause (b) of Section 3(1) which was substituted by Regulation I of 1970 raised a presumption that the property situated in the Agency Tracts in possession of a non-tribal shall be presumed to have been acquired by such a person or his predecessor-in-possession through a transfer made to him by a member of Schedule Tribe. The transfer of lands situated in the scheduled area in favor of non tribals is prohibited under the Land Transfer Regulations 1 of 70.

(X) Therefore the rights of the parties over such immovable property situated in the Scheduled Area are required to be determined as per the provisions of AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70.

(XI) The documents filed in support of the unofficial respondent /Tribal is that Gift deeds dated. 30.01.1974 and 08.11.1983 which were held among their family members and she claimed her right over the land in question by virtue of a gift deed executed by her husband in favour of her and that the land was originally occupied by Chekka Venkanna Dora, father in law of her, and filed House Tax receipts, and the "Residential Houses" certificate, issued by the Sarpanch, Gram Panchayat, Addateegala and by the then Mandal Revenue Officer, Addateegala. As per the records, the legal recourse in the case was initiated by the unofficial respondent when the house property in question was leased out to the Revision Petitioner and latter had refused to vacate the premises.

(XII) The documents filed by the Revision Petitioner are the House Tax demand notice for the year 2019-2023 in relation to House No 1-497, House Tax receipt for the year 2017 in relation to House No 1-506 and the House Tax receipt for the year 2015-2016 but the column in respect of House No. is in blank.

(XIII) There is no documentary evidence in support of the claim of the Revision Petitioner that she was in occupation of the house property even prior to

the commencement of Land Transfer Regulations 1 of 59 as amended by 1 of 70. Further the enquiry report of the Revenue Divisional Officer, Rampachodavaram who submitted his report in the case (vide Ref. C/380/2020, dated.3-12-2020) shows that the Revision Petitioner has no valid records in support of her claim.

(XIV) It could be seen from the ground trothing reports of both the Revenue Divisional Officer, Rampachodavaram vide his Ref. C/380/2020, dated. 03.12.2020 and the Tahsildar, Addateegala in his ref. B/321/2020, dated. 02.12.2020 which have confirmed that the Petition Scheduled property originally belongs to the father in law of unofficial respondent/Murla Chellayamma, Kondareddy (ST) herein but it is a Government Pormboke, and recorded as a village site in records and that the Revision Petitioner came in to possession of the house property subsequently.

(XV) As contended by the counsel for the Revision Petitioner no transfer of land is permitted among the individuals over Government lands. Therefore the Gift deeds filed by the unofficial respondents are not required to be considered. But it is also a fact that the father in law of the un official respondent originally had been on occupation of the land as per the reports of the Revenue Authorities and subsequently the said property came in to possession of the unofficial respondent herein through execution of a Gift deed by her husband in 1983.

(XVI) However as per the reports the house property in question was given on rent by the unofficial respondent/Tribal to the nontribal Revision Petitioner. Hence the said transaction is required to be legally considered as void in view of the provisions of Land Transfer Regulations 1 of 59 as amended by 1 of 70 made applicable to the Scheduled Area which prohibits lease also between tribals and non tribals.

(XVII) However the counsel for the Revision Petitioner has raised a legal question since the land in question is classified as Government Poramboke, the provisions of LTR 1 of 70 have no application to the present case, relying on a decision of the Hon'ble High Court made in D.Appalaraju & others Vs State of AP, 2007(6) ALT 510(AP).

(XVIII) The facts in D.Appalaraju case are that "the occupation of land held by the petitioner there in is a road margin, and has never been in possession of any tribal. The Special Deputy Collector(TW) while disallowing eviction proceedings by order dated:23-9-1979 held that no transfer in contravention of the provisions of LTR 1959 is involved. The High Court held on the said facts of the case and finding given by the Special Deputy Collector(TW) as "Hence the provisions of Regulations 1 of 59 have no application and consequently the impugned order of ejection without jurisdiction are liable to be set aside on that ground alone. However the High Court made it clear that its order shall not preclude the respondents officials to take recourse to any other appropriate statute to recover possession from the petitioners following due process of law" (Emphasis supplied).

(XIX) But in the present case there is clear evidence that the land in question was earlier in possession of a Tribal/the unofficial respondent and it came in to possession of the non tribal Revision Petitioner subsequently which is hit by the provisions of Land Transfer Regulations 1 of 59 as amended by 1 of 70. Moreover the facts in D.Appalaraju case are different from the facts in the present case. Hence the ruling is not applicable to the present case.

(XX) As per the facts of the present case, undisputedly the land in question is a Government poramboke and is in possession of nontribal Revision Petitioner.

(XXI) Now the point for consideration further is whether the provisions of Land Transfer Regulations 1 of 70 have application to the present facts of the case.

(XXII) Para 3(1)(a) of the Regulation which opens with a non- obstante clause provides that a transfer of immovable property situate in the Agency Tracts by a person, whether or not such a person is a member of the Scheduled Tribe, shall be absolutely void.

(XXIII) Section 2(g) of the Regulation, defines "Transfer" means mortgage with or without possession, lease, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, gift, sale exchange or other dealing".

(XXIV) The Andhra Pradesh High Court held (Vuppuluri Veera Venkata Raju And vs Special Deputy Tahsildar, on 9th August, 2007, 2007 (6) ALD 292) that "Even if the land is classified as Gayalu/Government poramboke land, the person who is in possession of such land must be said to be dealing with such immovable property and therefore the same falls within the scope of "Transfer as defined under Section 2(g) of the Regulation and therefore the Regulation 1 of 1959, as amended by Regulation 1 of 1970, applies."

(XXV) Therefore the Revision Petitioner cannot argue that the provisions of the AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 have no application to the occupation of proramboke lands by non tribals in the Scheduled Area.

(XXVI) The widespread illegal occupation of village common lands by non-tribals in Scheduled Areas of Andhra Pradesh fell for the consideration of the Hon'ble AP High Court. The High Court struck down all the earlier orders of the Government permitting non-tribals to continue in occupation of Government lands in the Scheduled Areas holding that orders are in violation of the 1959 Regulation in P.Gangamma Vs. Vasudha Mistra & others (1998 (2) ALD 35).

(XXVII) It is appropriate to cite the decision of the Apex Court in Samata Vs State of Andhra Pradesh case (AIR SC 1997) which gave an interpretation that State and its instrumentalities can also be treated as

"person" occurring in the first part of Section 3(1)(a) of Regulations 1 of 59. Therefore, as per the interpretation given by the Apex Court, even the State or its instrumentalities are prohibited from transferring of any immovable property situated in Agency tracts to non-tribals.

(XXVIII) Therefore the possession and occupation of Government Poramboke site by non-tribal Revision Petitioner is in clear violation of the provisions of AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70. The finding given by the Appellate Court/Additional Agent to Government in respect of the claim made by the unofficial respondent/ST over the house property in question is valid and proper and does not deserve any interference.

(XXIX) In exercise the powers conferred under section 6 of the AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 the Revision Petition filed by the Petitioner is dismissed. Therefore the impugned order 17-12-2020, passed by the Additional Agent to Government, Rampachodavaram in CMA.No.16/2020, is hereby upheld, confirming the orders of the Special Deputy Collector (TW), Rampachodavaram passed in L.T.R.P.No.2 of 2015, dated :26-06-2020. As a sequel interim orders if any passed in the matter shall stand vacated and the Revision Petition is disposed of accordingly.

6. Government after careful examination of the revision petition and the circumstances stated supra and in exercise of the powers conferred under Section 6 of A.P.S.A.L.T.R., 1959 as amended by Reg. 1/70, the orders passed by the Appellate Authority Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District in CMA No. 16/2020, dated: 17-12-2020 are hereby upheld and the Revision petition filed by Smt. Nadimpalli Vijayalakshmi, W/o. Subbraju, Addateegala (V&M), Alluri Sitharamaraju District against the orders of the Additional Agent to the Government, Rampachdavaram, Alluri Sitharamaraju District in C.M.A.No.16/2020, dated:17.12.2020 in respect of land an extent of Ac.0.08 Cts in Sy.No.69/3 situated at Addateegala (V&M) Alluri Sitharamaraju District erstwhile East Godavari District is Dismissed and Interim orders passed if any are hereby vacated in the matter.

7. The Collector & District Magistrate, Alluri Sitharamaraju District, Paderu is requested to take necessary action in the matter and acknowledge the receipt of the case records, which are returned herewith the Additional Agent to Government/ Project Officer, Rampachodavaram, Alluri Sitharamaraju District.

8. This order shall be published in apegazette.cgg.gov.in.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
PRINCIPAL SECRETARY TO GOVERNMENT(TW)

To
The Agent to Government/Collector & District Magistrate,
Paderu, Alluri Sitharamaraju District. PIN-530 011.
The Additional Agent to Govt. cum Project Officer, ITDA, Rampachodavaram,
Alluri Sitharamaraju District, PIN-533 288. (w.e)

The Special Deputy Collector, Rampachodavaram,
Alluri Sitharamaraju District. PIN-533 288
The Tahsildar, Addateegala Mandal, Alluri Sitharamaraju District.
Sri Changanti Srinivasa Rao & M.V.R. Prakash, Advocates, Rampachodavaram,
Alluri Sitha Ramaraju District, PIN-533288.
Smt.Nadimpalli Vijayalakshmi, W/o. Subbraju, Addateegala (V&M),
Alluri Sitha Ramaraju District.
Smt.Murla Chellayamma, W/o.late Satyanarayana,
D.Bhimavaram Village, Mandal,
Alluri Sitha Ramaraju District.

Copy to:
The P.S. to Hon'ble Dy. Chief Minister (TW)
The P.S. to Secretary (TW).
The Commissioner of Printing, Stationery (for Publication in the AP Gazette),
Vijayawada.
SF/SC.

// FORWARDED :: BY ORDER //

SECTION OFFICER